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At a Special Term, Part 17, of the  
Supreme Court of the State of New  
York, held in and for the County of  
New York, at 60 Centre Street,  
New York, New York on the 17 day  
of July 2014

LFO-1

**PRESENT: HON. SHLOMO HAGLER**

**SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NEW YORK**

X

In the Matter of the Application of

**PERFECT BUILDING MAINTENANCE, A  
DIVISION OF PBM, LLC**

Petitioner,

**JUDGMENT AND ORDER**

For a Judgment Pursuant to C.P.L.R. Art 78

Index No.: 100253/2014

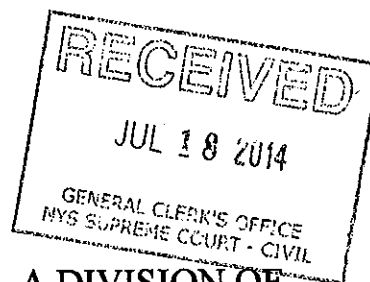
-against-

Hagler, J.

**AI HO and NEW YORK STATE  
DIVISION OF HUMAN RIGHTS,**

Respondents.

X



**Petitioner PERFECT BUILDING MAINTENANCE, A DIVISION OF**

**PBM, LLC, by its attorney, Harry Weinberg, Esq., having duly moved for a**

**judgment pursuant to CPLR Art. 78 to prohibit the Respondent STATE DIVISION**

**OF HUMAN RIGHTS from adjudicating the complaint that Respondent AI HO**

**had filed against it on or about May 14, 2013 on the ground that the State Division**

of Human Rights lacked jurisdiction to consider the complaint, and the proceeding having regularly come on to be heard,

NOW, upon reading and filing the Notice of Petition dated February 24, 2014; the Petition verified February 24, 2014; and the Answer of the Respondent State Division of Human Rights verified April 9, 2014; and after due deliberation having been held thereon, it is

ORDERED AND ADJUDGED, that the Petition is denied and the Proceeding be and the same is hereby dismissed, in accordance with the Decision of this Court read upon the record at oral argument on June 23, 2014, the transcript of which is attached hereto.

~~Dated: New York, New York~~

~~2014~~

**FILED**

**JUL 31 2014**

**COUNTY CLERK'S OFFICE  
NEW YORK**

ENTER,

~~Justice, Supreme Court, New York County~~

**SHLOMO HAGLER**  
J.S.C.

*Norman Goodman*

*C. L. b*

☐ DO NOT POST

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK : PART 17

3 -----X  
4 In the Matter of the Application of

5 PERFECT BUILDING MAINTENANCE, A DIVISION OF PBM, LLC

6  
7 Petitioner,

8 For a Judgment Pursuant to CPLR Article 78

9 - against -

10 AI HO and NEW YORK STATE DIVISION OF HUMAN RIGHTS,

11 Respondents.

12 -----X  
13 Index No. 100253/14

14 June 23, 2014  
15 60 Centre Street  
16 New York, New York

17 B E F O R E: HONORABLE SHLOMO HAGLER, JSC

18 A P P E A R A N C E S:

19 LAW OFFICES OF HARRY WEINBERG  
20 Attorneys for Petitioner  
21 292 Madison Avenue  
22 New York, New York 10017  
23 BY: HARRY WEINBERG, ESQ.

24 STATE OF NEW YORK DIVISION OF HUMAN RIGHTS  
25 Respondent  
One Fordham Plaza  
Bronx, New York 10458  
BY: MICHAEL SWIRSKY, ESQ.

AI HO  
Respondent, Pro Se

Rachel C. Simone, CSR, RMR, CRR

1                   Finally, the issues in this case are not  
2                   independent of the collective bargaining agreement. They  
3                   are intertwined. The collective bargaining agreement  
4                   specifically cites the statutes that are at issue here and  
5                   makes them arbitrable, makes claims arising under them  
6                   arbitrable. By doing what she is doing, Ms. Ho is  
7                   circumventing that provision and is availing herself of a  
8                   right she doesn't have.

9                   Thank you.

10                  THE COURT: All right. no more argument. I've  
11                  read your papers. And I have pulled every case that you  
12                  cited. I also looked at the Nova decision is very quickly.  
13                  I essentially had made up my mind before the argument, but  
14                  it is always helpful to have argument. It didn't, though,  
15                  change my position in any way, shape, or form.

16                  First I want to compliment the attorneys who did  
17                  a fine job in briefing the points. It was wonderful to  
18                  look at decisions from the US Supreme Court and how they  
19                  interact with state law. It was quite interesting. Judges  
20                  in Supreme Court New York County don't often get to  
21                  interpret Federal US Supreme Court law, and I found it very  
22                  exciting, new, and fresh.

23                  I believe I understand where the US Supreme Court  
24                  was coming from when they issued Pyett, when they issued  
25                  the Waffle House decision, and when they issued Preston

Rachel C. Simone, CSR, RMR, CRR

1       versus Ferrer, and last but not least the Coventry First  
2       decision. And let's deal with Pyett first because it  
3       really is the latest pronouncement in this area.

4               As I had alluded to earlier, in the Pyett case  
5       the EEOC issued a dismissal and notice of right  
6       determination which, for all intents and purposes, ended  
7       its involvement with the complainant, so there was no need  
8       for the EEOC to do anything. So the arbitration agreement  
9       between the parties would certainly continue and be  
10      enforceable. As counsel correctly noted, petitioner's  
11      counsel correctly noted that's all Pyett really says, that  
12      the arbitration agreement between individuals and owners  
13      with regard to collective bargaining, that you can go the  
14      arbitration route. And, quite frankly, the arbitration  
15      route is the preferred route. I would not venture to say  
16      that it is the lesser of the evils. Quite frankly, the  
17      courts have encouraged and have strictly enforced  
18      arbitration agreements in order that they do go to  
19      arbitration.

20             That being said, let's move on to the Waffle  
21      House decision. In Waffle House the US Supreme Court found  
22      that the EEOC did not consent to the arbitration agreement,  
23      therefore it had a statutory enforcement authority to  
24      continue its investigative process, and the government  
25      agency had a right to vindicate the public interest.

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1           So, one, that they never were a party to the  
2           arbitration agreement; and, two, they can vindicate the  
3           public interest. That's what Waffle House stands for.  
4           Thereafter, Coventry First reinforced Waffle House and said  
5           basically that Waffle House is still good law and that  
6           Waffle House stands for the proposition -- again I will  
7           reiterate -- that since the Attorney General did not sign  
8           the agreement that was between the parties and, secondly,  
9           it had a right to vindicate the public interest, had a  
10          right to step in and enforce and investigate the law as it  
11          sees it pursuant to New York State law.

12           Preston versus Ferrer is also a very interesting  
13          case. In that case I believe it distinguishes Waffle House  
14          in that it found that the agency in question was not an  
15          adjudicator but a prosecutor, and it can pursue enforcement  
16          in its own name which is very different than we have here.

17           I believe that all four cases really stand for  
18          the proposition that you can have dual tracts. I think  
19          that's what the parties are missing. The EEOC, the  
20          Attorney General, and now, I will say, the Division have  
21          the right under New York State law to vindicate the  
22          interest of the public and to investigate and enforce New  
23          York State laws.

24           In the same vein, the parties to an arbitration  
25          agreement have the right to go to arbitration. You can

1 choose at this very moment to go to arbitration and they  
2 could do nothing to stop you.

3 What I see the interpretation of all four cases  
4 is that it is a dual track. The EEOC, the Attorney  
5 General, and now the Division can continue to enforce its  
6 laws in the state of New York; and the petitioner can  
7 compel arbitration. They can't stop you, I can't stop you.  
8 So my ruling is very simple. I am denying your petition to  
9 stay the -- let me get the actual relief sought. To  
10 prohibit the respondent New York State Division of Human  
11 Rights from adjudicating employment discrimination case  
12 under Division Case Number 10162344 because you believe it  
13 exceeds jurisdiction because the sole remedy for respondent  
14 would be to arbitrate.

15 I find that the Division of Human Rights has an  
16 independent right to investigate the employment  
17 discrimination case and you have a common right to go to  
18 arbitration. Therefore, this Court denies -- it is ordered  
19 and adjudged I deny the petition for the reasons herein.

20 I am not stopping you from going to arbitration.  
21 I want to make sure you understand that. I am only denying  
22 the relief prohibiting the Division from going forward.

23 The foregoing constitutes the decision of the  
24 Court.

25 MR. WEINBERG: Thank you, your Honor.

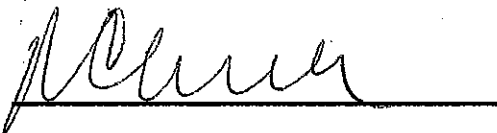
Rachel C. Simone, CSR, RMR, CRR

1 MR. SWIRSKY: Would you like us to prepare an  
2 order?

3 THE COURT: Submit an order on notice to the  
4 parties.

5 \* \* \*

6 The foregoing is hereby certified to be a true and  
7 accurate transcript of the proceedings.

8  
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10 

11 Rachel C. Simone

12 Senior Court Reporter

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Rachel C. Simone, CSR, RMR, CRR



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**JUDGMENT AND ORDER**

**Caroline J. Downey**  
General Counsel

**STATE DIVISION OF HUMAN RIGHTS**

One Fordham Plaza, Fourth Floor  
Bronx, New York 10458  
(718) 741-8398

**FILED**  
JUL 31 2014  
M  
AT 9:40 A  
N.Y. CO. CLKS OFFICE